

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT MEDINA, JR.,

Plaintiff,

V.

GUSTAVO MARTINEZ, et al.,

Defendants.

Case No. 1:23-cv-00935-KES-EPG (PC)

ORDER GRANTING PLAINTIFF'S
MOTION FOR VOLUNTARY DISMISSAL
WITHOUT PREJUDICE UNDER FED. R.
CIV. P. 42(a)(2) AND DIRECTING THE
CLERK OF COURT TO CLOSE THE CASE

(Doc. 53)

Plaintiff Robert Medina, Jr. was confined in Fresno County Jail (FCJ) at the time of the events giving rise to this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff proceeds pro se and in forma pauperis on his Eighth Amendment claim against defendants J. Alvarez, Gustavo Martinez, and First-Name-Unknown (FNU) Martinez. Defendant Alvarez was served and answered plaintiff's complaint. Doc. 37. The deadline to identify and serve the two other defendants has passed, Docs. 34, 50, and plaintiff has not done so. *See docket.*

On January 27, 2025, plaintiff wrote to the Court, stating that “This is Medina” and asking the Court “to end this case” because he wants to “move on with [his] life.” Doc. 53. The Court construed plaintiff’s request as a motion to voluntarily dismiss this action under Rule 41(a)(2) and ordered defendant Alvarez to respond. Doc. 54. Defendant Alvarez responded that he had no objections to dismissal and that he agreed with plaintiff’s decision to seek a

1 dismissal of this action. Doc. 55. Defendant Alvarez further stated that, if the dismissal was
2 granted, he would not seek costs that could be available to him. *Id.*

3 Where a defendant has served an answer or a motion for summary judgment but has not
4 signed a stipulation to dismiss, a plaintiff's voluntary dismissal must be effected through
5 Federal Rule of Civil Procedure 41(a)(2). Rule 41(a)(2) "allows a plaintiff, pursuant to an
6 order of the court, and subject to any terms and conditions the court deems proper, to dismiss
7 an action without prejudice at any time." *Zanowick v. Baxter Healthcare Corp.*, 850 F.3d
8 1090, 1093 (9th Cir. 2017). When the "the request is to dismiss without prejudice, [a] District
9 Court should grant a motion for voluntary dismissal under Rule 41(a)(2) unless a defendant can
10 show that it will suffer some plain legal prejudice as a result." *Kamal v. Eden Creamery, LLC*,
11 88 F.4th 1268, 1279 (9th Cir. 2023) (internal quotation marks and citation omitted). "Legal
12 prejudice" is "prejudice to some legal interest, some legal claim, some legal argument." *Id.*
13 (internal quotation marks and citation omitted). Because the only defendant who has appeared
14 in this action does not object to plaintiff's motion for voluntary dismissal and does not assert
15 that he will suffer any prejudice, the Court will grant Plaintiff's motion.

16 Accordingly, IT IS ORDERED that:

17 1. Plaintiff's motion for voluntary dismissal, Doc. 53, is GRANTED.
18 2. This action has been terminated without prejudice under Fed. R. Civ. P. 41(a)(2),
19 with each party bearing their own attorney fees and costs.
20 3. The Clerk of Court is directed to CLOSE this case.

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23 IT IS SO ORDERED.

24 Dated: January 31, 2025



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UNITED STATES DISTRICT JUDGE